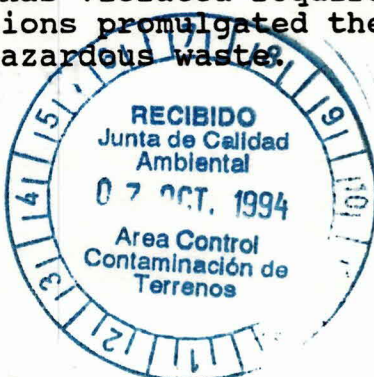


382 ✓

Docket No: II RCRA-94-0302



The Complainant in this proceeding, Conrad Simon, Director of the Air & Waste Management Division of the U.S. Environmental Protection Agency, Region II, who has been duly delegated the authority to institute this action, hereby alleges upon information and belief:

1. Respondent is Puerto Rico Sun Oil (hereinafter Respondent or PRSO).
2. Respondent is a corporation doing business in the Commonwealth of Puerto Rico and a "person" as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
3. Respondent is engaged in activities relating to petroleum refining operations.
4. Respondent conducts the business operations alleged above in paragraph "3" at a facility, owned and operated by Respondent at Road 901 Km 2.7 Camino Nuevo Ward, Yabucoa, Puerto Rico (hereinafter "Respondent's facility"), as that term is defined in 40 C.F.R. § 260.10.
5. On or about August 18, 1980, the Respondent notified EPA, pursuant to Section 3010 of the RCRA, 42 U.S.C. § 6930, that it conducts generation and treatment, storage, or disposal activities involving "hazardous waste" as that term is defined in Section 1004(5) of the Act, 40 C.F.R. § 260.10 at its facility.
6. On or about November 19, 1980, Respondent submitted a Part A permit application to store hazardous waste at its facility for more than ninety (90) days in its hazardous waste storage building.
7. On or about May 26, 1992, the Respondent submitted its most recent revised Part A Permit application (hereinafter "the Part A permit application") to store hazardous waste for more than ninety (90) days in its hazardous waste storage building.
8. Title 40 C.F.R. Part 265 set forth federal interim status standards for treatment, storage and disposal (hereinafter TSD) facilities.
9. Respondent is both a "generator" of hazardous waste, as that term is defined in 40 C.F.R. § 260.10 and obtained "interim status" to store hazardous waste for more than ninety (90) days in its hazardous waste storage building.
10. On or about November 16, 1993, a representative of the EPA conducted a RCRA compliance inspection of Respondent's facility to determine PRSO's compliance with applicable federal regulations for "hazardous waste management" (as that phrase is defined in Section 1004(7), 42 U.S.C. § 6903(7)).

11. At the time of the November 16, 1993 inspection, Respondent was storing approximately 400 fifty-five gallon containers of hazardous waste in the hazardous waste storage building, approximately 180 fifty-five gallon containers of hazardous waste in the area behind the hazardous waste storage building, and 14 twenty-seven cubic yard containers in the trailer area near the sludge drying system. Four of the containers in the trailer storage area were neither labeled with the words "hazardous waste," nor with an accumulation start date.

12. On or about January 21, 1994 and May 20, 1994, EPA requested additional information from PRSO in information request letters, pursuant to the provisions of Section 3007 of RCRA, 42 U.S.C. §6927, in order to evaluate Respondent's compliance with RCRA. By letters dated March 15, 1994, April 2, 1994, May 6, 1994, and June 17, 1994, PRSO submitted its responses to EPA's January 21, 1994 and May 20, 1994 Information Requests.

13. The information obtained by EPA through the above inspection and requests for information, reveals that Respondent has violated or is in violation of one or more requirements of the Act, and the regulations promulgated thereunder concerning the management of hazardous waste, as specified below.

Count I - Storage Behind the Hazardous Waste Storage Building

14. Complainant realleges each allegation contained in paragraphs "1" through "13", inclusive, as if fully set forth herein.

15. Pursuant to 40 CFR § 262.34(b), a generator who accumulates hazardous waste for more than ninety days is an operator of a storage facility and is subject to all applicable standards and requirements of 40 CFR Part 264 and 265 unless the generator has been granted a temporary extension to the ninety day period. PRSO received interim status from EPA, in accordance with 40 CFR Part 265, to store hazardous waste for more than ninety (90) days in its hazardous waste storage building.

16. At the time of the November 16, 1993, inspection, 180 fifty-five gallon drums of hazardous waste were being stored in the area behind the hazardous waste storage building.

17. In its responses to Complainant's January 21, 1994 and May 20, 1994, Information Requests, Respondent admitted that more than four hundred and fifty thousand (450,000) kilograms of hazardous waste had been stored in the area behind the hazardous waste storage building for more than ninety (90) days between August 1991 and January 1994.

18. Respondent's failure to either move those four hundred and fifty thousand (450,000) kilograms of hazardous waste to its hazardous waste storage building within ninety (90) days of generation or to transport that hazardous waste off site within ninety days of generation constitutes a violation of 40 CFR § 262.34(a).

Count II - Storage In The Trailer Storage Area

19. Complainant realleges each allegation contained in paragraphs "1" through "13", inclusive, as if fully set forth herein.

20. Pursuant to 40 CFR § 262.34(b), a generator who accumulates hazardous waste for more than ninety days is an operator of a storage facility and is subject to all applicable standards and requirements of 40 CFR Part 264 and 265 unless the generator has been granted a temporary extension to the ninety day period. PRSO received interim authorization from EPA, in accordance with 40 CFR Part 265, to store hazardous waste for more than ninety (90) days in its hazardous waste storage building.

21. At the time of the November 16, 1993, inspection, 14 twenty-seven cubic yard containers of hazardous waste were being stored in the area near the sludge drying system referred to as the trailer storage area.

22. In its responses to Complainant's January 21, 1994 and May 20, 1994, Information Requests, Respondent admitted that more than ninety-two thousand (92,000) kilograms of hazardous waste had been stored in the trailer storage area for more than ninety (90) days between May 1993 and December 1993.

23. Respondent's failure to either move those ninety-two thousand (92,000) kilograms of hazardous waste to its hazardous waste storage building within ninety (90) days of generation or to transport that hazardous waste off site within ninety days of generation constitutes a violation of 40 CFR § 262.34(a).

COUNT 3- Emergency Devices

24. Complainant realleges each allegation contained in paragraphs "1" through "13", inclusive, as if fully set forth herein.

25. 40 C.F.R. § 265.32(b) requires all facilities that have received interim status to store hazardous waste must be equipped with a device, such as a telephone (immediately available at the scene of operations) or a hand held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams.

26. At the time of the November 16, 1993 inspection, Respondent did not have a device for summoning emergency assistance such as a telephone or a hand held two-way radio either at the area behind the hazardous waste storage building or the area near the sludge drying system referred to as the trailer storage area.

27. Respondent's failure to have a device for summoning emergency assistance, as specified above, constitutes a violation of 40 C.F.R. § 265.32(b).

COUNT 4 - Failure to Label Hazardous Waste

28. Complainant realleges each allegation contained in paragraphs "1" through "13", inclusive, as if fully set forth herein.

29. 40 C.F.R. § 262.34(a)(3), provides that each container or tank of hazardous waste being accumulated on-site be "labelled or marked clearly with the words 'hazardous waste'".

30. At the beginning of the November 16, 1993 inspection, Respondent had not labelled or clearly marked with the words "Hazardous Waste," four (4) containers located in the trailer storage area.

31. Respondent's failure to have labelled or clearly marked with the words "Hazardous Waste," four (4) containers of hazardous waste located in the trailer storage area at the start of the November 16, 1993, inspection constitutes a violation of 40 C.F.R. § 262.34(a)(3).

COUNT 5- Accumulation Start Dates

32. Complainant realleges each allegation contained in paragraphs "1" through "13", inclusive, as if fully set forth herein.

33. 40 C.F.R. § 262.34(a)(2), requires that the date upon which each period of accumulation begins be clearly marked and visible for inspection on each container.

34. At the beginning of the November 16, 1993 inspection, Respondent had not clearly marked the date upon which each period of accumulation began (accumulation start dates), on four (4) containers stored in the trailer storage area.

35. Respondent's failure to have clearly marked accumulation dates on four (4) containers of hazardous waste in the trailer storage area at the start of the November 16, 1993, inspection constitutes a violation of 40 C.F.R. § 262.34(a)(2).

PROPOSED CIVIL PENALTY

In view of the above-cited violations, and pursuant to the authority of Section 3008 of RCRA, 42 U.S.C. § 6928, Complainant herewith proposes the assessment of a civil penalty in the amount of **SEVENTY THOUSAND AND FOUR HUNDRED (\$70,400.00) DOLLARS** against **Puerto Rico Sun Oil Company** as follows:

For violations of 40 C.F.R. § 262.34(a)	\$ 58,900
For violation of 40 C.F.R. § 265.32(b)	\$ 6,500
For violation of 40 C.F.R. § 262.34(a)(3)	\$ 1,000
For violation of 40 C.F.R. § 265.34(a)(2)	\$ 4,000
TOTAL:	<u>\$ 70,400</u>

COMPLIANCE ORDER

Based upon the foregoing and pursuant to the authority of Section 3008 of RCRA, 42 U.S.C. § 6928, Complainant hereby issues the following Compliance Order against Respondent:

1. Immediately upon the effective date of this Compliance Order, Respondent shall remove all hazardous waste, from the unauthorized areas that has been accumulated for greater than 90 days, to the authorized on-site storage area, or an authorized off-site facility, as required by 40 C.F.R. § 270.
2. Immediately upon the effective date of this Compliance Order, Respondent shall clearly mark the accumulation start date on each container at the facility, as required by 40 C.F.R. § 262.34(a)(2).
3. Immediately upon the effective date of this Compliance Order, Respondent shall clearly mark or label each container at the facility, with the words "Hazardous Waste", as required by 40 C.F.R. § 265.34(a)(3).
4. The Respondent shall submit to EPA a written description or notice of its compliance (accompanied by a copy of all appropriate supporting documentation) or noncompliance for each of the requirements set forth herein within ten (10) calendar days of the effective date of this Compliance Order. If the Respondent is in noncompliance with a particular requirement, the notice shall state the reasons for noncompliance and shall provide a schedule for achieving expeditious compliance with the requirement.

5. The Respondent shall submit the above required information and notices to the following addressees:

Mr. George C. Meyer, P.E., Chief
Hazardous Waste Compliance Branch
U.S. Environmental Protection Agency, Region II
26 Federal Plaza, Room 1000F
New York, New York 10278

Mr. Bartholemew George
Environmental Engineer
Hazardous Waste Compliance Branch
U.S. Environmental Protection Agency, Region II
26 Federal Plaza, Room 1000G
New York, New York 10278

NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(c) of RCRA, a violator failing to take corrective action within the time specified in a Compliance Order is liable for a civil penalty of up to \$ 25,000 for each day of continued noncompliance. Such continued noncompliance may also result in suspension or revocation of any permits issued to the violator, whether issued by the Administrator or the State.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

As provided in Section 3008(b) of RCRA, 42 U.S.C. §6928(b), and in accordance with EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, 45 Fed. Reg. 24,360 (April 9, 1980) (a copy of which accompanies this Complaint, Compliance Order and Notice of Opportunity for Hearing), you have the right to request a Hearing to contest any material fact set out in the Complaint, or to contest the appropriateness of the proposed penalty, or the terms of the Compliance Order. Consistent with the provisions of Section 3008(b) of RCRA, should you request such a public Hearing, notice of the Hearing will be provided and the Hearing will be open to the general public. However, in the absence of such a specific request, public notice of a scheduled Hearing will not be published.

To avoid being found in default and having the proposed civil penalty assessed and the Compliance Order confirmed without further proceedings, you must file a written Answer to the Complaint, which may include a request for a Hearing. Your Answer, if any, must be addressed to the U.S. Environmental Protection Agency, Regional Hearing Clerk, 26 Federal Plaza, New

York, New York 10278, and must be filed within thirty (30) days of your receipt of this Complaint, Compliance Order, and Notice of Opportunity for Hearing.

The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint, and should contain (1) a clear statement of the facts which constitute the grounds of your defense, and (2) a concise statement of the issues which you intend to raise at the Hearing.

The denial of any material fact, or the raising of any affirmative defense, will be construed as a request for a Hearing. Failure to deny any of the factual allegations in the Complaint will be deemed to constitute an admission of the undenied allegations. Failure to file a written Answer within thirty (30) days of receipt of this instrument will be deemed to represent your admission of all facts alleged in the Complaint and a waiver of your right to a formal Hearing to contest any of the facts alleged by the Complainant. A default may result in the final issuance of the Compliance Order, and assessment of the proposed civil penalty, without further proceedings.

INFORMAL SETTLEMENT CONFERENCE

Whether or not you request a Hearing, the EPA encourages settlement of this proceeding consistent with the provisions of RCRA. At an informal conference with a representative of the Complainant you may comment on the charges and provide whatever additional information you feel is relevant to the disposition of this matter, including any actions you have taken to correct the violation, and any other special circumstances you care to raise. The Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with you in such a conference, or to recommend that any or all of the charges be dismissed, if the circumstances so warrant. A request for an informal conference and other questions that you may have regarding this Complaint, Compliance Order, and Notice of Opportunity for Hearing should be directed to Gary H. Nurkin, Esq., Assistant Regional Counsel, Air, Waste & Toxic Substances Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278, telephone (212) 264-5341.

Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written Answer and Request for a Hearing must be submitted. The informal conference procedure may be pursued as an alternative to, or simultaneously with, the adjudicatory Hearing procedure. However, no penalty reduction will be made simply because such a conference is held.

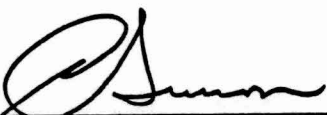
Any settlement which may be reached as a result of such conference will be embodied in a written Consent Agreement and Consent Order to be issued by the Regional Administrator. Signing of such Consent Agreement in this matter shall constitute a waiver of the right to request and to obtain a formal Hearing on any matter stipulated to therein. Entering into a settlement through signing of such Consent Agreement and continued compliance with the terms and conditions set forth in both the Consent Agreement and Compliance Order will terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Entering into a settlement, and your continuing compliance with the conditions set forth in the Compliance Order, do not extinguish, satisfy, or otherwise affect your obligation and responsibility to comply with all other applicable regulations and requirements set forth in, and/or promulgated pursuant to, RCRA, and to maintain such compliance.

PAYMENT OF PENALTY

Instead of filing an Answer, requesting a Hearing or requesting an informal settlement conference, you may choose to comply with the terms of the Compliance Order, and to pay the proposed penalty. In that case, payment should be made by sending a check in the amount of the penalty specified in the "Proposed Civil Penalty" Section of this instrument to the Regional Hearing Clerk, EPA - Region II, P.O. Box 360188M, Pittsburgh, PA 15251. A copy of the check should be sent to Gary H. Nurkin, Esq., Assistant Regional Counsel, at the address referenced above. Your check must be made payable to the Treasurer of the United States.

DATED: September 30, 1994
New York, New York

COMPLAINANT:



CONRAD SIMON
Director
Air & Waste Management Division
Environmental Protection Agency
Region II

To: John M. Shea
President and Refinery Manager
Puerto Rico Sun Oil Company
P.O. Box 186
Road 901 Km 2.7
Camino Nuevo Ward
Yabucoa, Puerto Rico 00962

cc: Carl Axel Soderberg, Director
U.S. Environmental Protection Agency
Podiatry Center Building, Office 2A
1413 Fernandez Juncos Avenue
Santurce, Puerto Rico 00907

Camello Vázquez, Acting Director
Land Pollution Control Area
Environmental Quality Board
P.O. Box 11488
Santurce, Puerto Rico 00910

Certificate of Service

This is to certify that on the 30 day of September 1994, I served a true and correct copy of the foregoing Complaint, Compliance Order and Notice of Opportunity of Hearing ("Complaint"), and a true and correct copy of the Consolidated Rules of Practice by certified mail to, John M. Shea, President and Refinery Manager, Puerto Rico Sun Oil Company, Road 901 Km 2.7 Camino Nuevo Ward, Yabucoa, Puerto Rico 00767-0186. I hand carried the original and a copy of the foregoing Complaint to the Regional Hearing Clerk.

Don Ahear

ATTACHMENT I

REASONING BEHIND PROPOSED PENALTY

Pursuant to 40 C.F.R. § 22.14(a)(4) and (5), EPA is providing the Respondent with this statement explaining the reasoning behind the proposed penalty assessed for each violation cited in this Complaint. Attached in this Complaint the Respondent will find the EPA Penalty Computation Worksheet ("Worksheet") for the violation for which the Respondent have been assessed a proposed penalty (Attachment II).

RCRA Section 3008(a)(3), 42 U.S.C. § 6928(a)(3), states that the seriousness of the violation must be taken into account in assessing penalties. The seriousness of a violation is based on the potential for harm and extent of deviation from a statutory or regulatory gravity based penalty.

Attachment II-1

PENALTY COMPUTATION WORKSHEET COUNTS ONE AND TWO

Company Name: Puerto Rico Sun Oil Company

Address: Road 901 Km 2.7 Camino Nuevo Ward
Yabucoa, Puerto Rico 00767-0186

Requirement Violated: 40 C.F.R. § 262.34(a)

PENALTY AMOUNT FOR COMPLAINT

- | | |
|---|------------------|
| 1. Gravity based penalty from matrix | <u>\$ 9,500</u> |
| (a) Potential for harm | <u>Moderate</u> |
| (b) Extent of Deviation | <u>Major</u> |
| 2. Select an amount from the appropriate multi-day matrix cell | <u>\$ 1,300</u> |
| 3. Multiply line 2 by number of days of violation minus 1 [or other number, as appropriate (provide narrative explanation)] | <u>\$ 49,400</u> |
| 4. Add line 1 and 3 | <u>\$ 58,900</u> |
| 5. Percent increase/decrease for good faith | <u>N/A</u> |
| 6. Percent increase for willfulness/negligence | <u>N/A</u> |
| 7. Percent increase for history of noncompliance | <u>N/A</u> |
| 8.* Total lines 5 through 7 | <u>N/A</u> |
| 9. Multiply line 4 by line 8 | <u>N/A</u> |
| 10. Calculated economic benefit | <u>N/A</u> |
| 11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint | <u>\$ 58,900</u> |

* Additional downward adjustments, where substantiated by reliable information, may be accounted for here.

Attachment II-1

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

1. Gravity Based Penalty

(a) Potential for Harm: The "Potential for Harm" resulting from this violation was determined to be moderate because the Respondent's failure to comply poses a significant adverse effect on the statutory or regulatory purposes or procedures for implementing the RCRA program. The Respondent's failure to include the information regarding the two storage areas in the Part A application, weakened EPA's ability to ensure that Respondent's additional storage areas met the applicable requirements. This information is necessary to ensure that while the waste stored on-site for long periods of time the risk of releases to the environment is minimized.

(b) Extent of Deviation: The "Extent of Deviation" present in this violation was determined to be major because the Respondent deviated from the requirements of the regulation to such an extent that there was substantial noncompliance. The facility had not submitted any information to EPA regarding these two additional storage areas that were storing wastes for greater than 90 days. Additionally, there were 39 separate instances in which the 90 day period was exceeded, with varying periods of exceedance. The periods of exceedance ranged from four (4) days up to two hundred (200) days.

The mid-point of the "Matrix Cell Range" was selected as an appropriate amount for this violation.

(c) Multiple/Multi-day: This violation occurred on thirty-nine (39) separate instances where different containers of hazardous waste were placed in the two areas of concern with different accumulation start dates, which then exceeded the ninety day storage limitation.

2. Adjustment Factors (Good faith, willfulness/negligence, history of compliance, ability to pay, environmental credits, and other unique factors must be justified, if applied.)

- (a) Good faith: Not applicable
- (b) Willfulness/Negligence: Not applicable
- (c) History of Compliance: Not applicable
- (d) Ability to Pay: Not applicable
- (e) Environmental Project: Not applicable
- (f) Other Unique Factors: Not applicable

3. Economic Benefit: Since the cost of disposal is not avoided, only delayed, the economic benefit derived from activity related to this violation would be less than \$2,500. Economic benefit less than \$2,500 is considered insignificant and not added into the penalty amount.

4. Recalculation of Penalty Based on New Information: Not
applicable

* Percentage amounts are applied to the dollar amount calculated
on line 4, Part I.

Attachment II-2

PENALTY COMPUTATION WORKSHEET COUNT THREE

Company Name: Puerto Rico Sun Oil Company

Address: Road 901 Km 2.7 Camino Nuevo Ward
Yabucoa, Puerto Rico 00767-0186

Requirement Violated: 40 C.F.R. § 265.32(b)

PENALTY AMOUNT FOR COMPLAINT

- | | |
|---|-----------------|
| 1. Gravity based penalty from matrix | \$ <u>6,500</u> |
| (a) Potential for harm | <u>Moderate</u> |
| (b) Extent of Deviation | <u>Moderate</u> |
| 2. Select an amount from the appropriate multi-day
matrix cell | <u>N/A</u> |
| 3. Multiply line 2 by number of days of violation minus
1 [or other number, as appropriate (provide narrative
explanation)] | <u>N/A</u> |
| 4. Add line 1 and 3 | \$ <u>6,500</u> |
| 5. Percent increase/decrease for good faith | <u>N/A</u> |
| 6. Percent increase for willfulness/negligence | <u>N/A</u> |
| 7. Percent increase for history of noncompliance | <u>N/A</u> |
| 8.* Total lines 5 through 7 | <u>N/A</u> |
| 9. Multiply line 4 by line 8 | <u>N/A</u> |
| 10. Calculated economic benefit | <u>N/A</u> |
| 11. Add lines 4, 9 and 10 for penalty amount
to be inserted into the complaint | \$ <u>6,500</u> |

* Additional downward adjustments, where substantiated
by reliable information, may be accounted for here.

Attachment II-2

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

1. Gravity Based Penalty

(a) Potential for Harm: The "Potential for Harm" resulting from this violation was determined to be moderate. Not having a device located at the two additional storage areas, for summoning emergency assistance would cause a delay in responding to an incident at either of the two additional storage areas.

(b) Extent of Deviation: The "Extent of Deviation" present in this violation was determined to be moderate. Since one of these areas is located near the interim status storage area, which has the necessary equipment, there is only one area that does not have immediate access to a device to summon emergency assistance.

The mid-point of the "Matrix Cell Range" was selected as an appropriate amount for this violation.

(c) Multiple/Multi-day: Not applicable

2. Adjustment Factors (Good faith, willfulness/negligence, history of compliance, ability to pay, environmental credits, and other unique factors must be justified, if applied.)

(a) Good faith: Not applicable

(b) Willfulness/Negligence: Not applicable

(c) History of Compliance: Not applicable

(d) Ability to Pay: Not applicable

(e) Environmental Project: Not applicable

(f) Other Unique Factors: Not applicable

3. Economic Benefit: Since the facility has a communication system in place, the economic benefit derived from not including the additional two storage areas related to this violation, would be less than \$2,500. Economic benefit less than \$2,500 is considered insignificant and not added into the penalty amount.

4. Recalculation of Penalty Based on New Information: Not applicable

* Percentage amounts are applied to the dollar amount calculated on line 4, Part I.

Attachment II-3

PENALTY COMPUTATION WORKSHEET COUNT FOUR

Company Name: Puerto Rico Sun Oil Company

Address: Road 901 Km 2.7 Camino Nuevo Ward
Yabucoa, Puerto Rico 00767-0186

Requirement Violated: 40 C.F.R. § 262.34(a)(3)

PENALTY AMOUNT FOR COMPLAINT

- | | |
|---|-----------------|
| 1. Gravity based penalty from matrix | \$ 1,000 |
| (a) Potential for harm | <u>Minor</u> |
| (b) Extent of Deviation | <u>Moderate</u> |
| 2. Select an amount from the appropriate multi-day
matrix cell | <u>N/A</u> |
| 3. Multiply line 2 by number of days of violation minus
1 [or other number, as appropriate (provide narrative
explanation)] | <u>N/A</u> |
| 4. Add line 1 and 3 | \$ 1,000 |
| 5. Percent increase/decrease for good faith | <u>N/A</u> |
| 6. Percent increase for willfulness/negligence | <u>N/A</u> |
| 7. Percent increase for history of noncompliance | <u>N/A</u> |
| 8.* Total lines 5 through 7 | <u>N/A</u> |
| 9. Multiply line 4 by line 8 | <u>N/A</u> |
| 10. Calculated economic benefit | <u>N/A</u> |
| 11. Add lines 4, 9 and 10 for penalty amount
to be inserted into the complaint | \$ 1,000 |

* Additional downward adjustments, where substantiated
by reliable information, may be accounted for here.

Attachment II-3

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

1. Gravity Based Penalty

(a) Potential for Harm: The "Potential for Harm" resulting from this violation was determined to be minor. Although the Respondent failed mark containers as "Hazardous Waste," and as a result there is an increase potential for mishandling this waste, the containers were stored in an area dedicated to storing hazardous waste.

(b) Extent of Deviation: The "Extent of Deviation" present in this violation was determined to be moderate. Respondent's non-compliance with the applicable regulation was very substantial. The violation was deemed to be moderate only because of the relatively small number of containers stored at the Facility at the time of the inspections.

The mid-point of the "Matrix Cell Range" was selected as an appropriate amount for this violation.

(c) Multiple/Multi-day: Not applicable

2. Adjustment Factors (Good faith, willfulness/negligence, history of compliance, ability to pay, environmental credits, and other unique factors must be justified, if applied.)

(a) Good faith: Not applicable

(b) Willfulness/Negligence: Not applicable

(c) History of Compliance: Not applicable

(d) Ability to Pay: Not applicable

(e) Environmental Project: Not applicable

(f) Other Unique Factors: Not applicable

3. Economic Benefit: There is no economic benefit derived from not properly marking and labeling the containers with the words "Hazardous Waste."

4. Recalculation of Penalty Based on New Information: Not applicable

* Percentage amounts are applied to the dollar amount calculated on line 4, Part I.

Attachment II-4

PENALTY COMPUTATION WORKSHEET COUNT FIVE

Company Name: Puerto Rico Sun Oil Company

Address: Road 901 Km 2.7 Camino Nuevo Ward
Yabucoa, Puerto Rico 00767-0186

Requirement Violated: 40 C.F.R. § 265.34(a)(2)

PENALTY AMOUNT FOR COMPLAINT

- | | |
|---|-----------------|
| 1. Gravity based penalty from matrix | <u>\$ 4,000</u> |
| (a) Potential for harm | <u>Moderate</u> |
| (b) Extent of Deviation | <u>Minor</u> |
| 2. Select an amount from the appropriate multi-day
matrix cell | <u>N/A</u> |
| 3. Multiply line 2 by number of days of violation minus
1 [or other number, as appropriate (provide narrative
explanation)] | <u>N/A</u> |
| 4. Add line 1 and 3 | <u>\$ 4,000</u> |
| 5. Percent increase/decrease for good faith | <u>N/A</u> |
| 6. Percent increase for willfulness/negligence | <u>N/A</u> |
| 7. Percent increase for history of noncompliance | <u>N/A</u> |
| 8.* Total lines 5 through 7 | <u>N/A</u> |
| 9. Multiply line 4 by line 8 | <u>N/A</u> |
| 10. Calculated economic benefit | <u>N/A</u> |
| 11. Add lines 4, 9 and 10 for penalty amount
to be inserted into the complaint | <u>\$ 4,000</u> |

* Additional downward adjustments, where substantiated
by reliable information, may be accounted for here.

Attachment II-4

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

1. Gravity Based Penalty

(a) Potential for Harm: The "Potential for Harm" resulting from this violation was determined to be moderate. Because the Respondent failed mark containers with the accumulation start date, there is an increased likelihood for the hazardous waste to be stored for greater than 90 days, increasing the potential for it to be mishandled and/or a release of hazardous waste to occur.

(b) Extent of Deviation: The "Extent of Deviation" present in this violation was determined to be minor. Although the facility had failed to mark four of the containers with the accumulation start date, the majority of containers on-site were properly marked with the accumulation start date.

The mid-point of the "Matrix Cell Range" was selected as an appropriate amount for this violation.

(c) Multiple/Multi-day: Not applicable

2. Adjustment Factors (Good faith, willfulness/negligence, history of compliance, ability to pay, environmental credits, and other unique factors must be justified, if applied.)

- (a) Good faith: Not applicable
- (b) Willfulness/Negligence: Not applicable
- (c) History of Compliance: Not applicable
- (d) Ability to Pay: Not applicable
- (e) Environmental Project: Not applicable
- (f) Other Unique Factors: Not applicable

3. Economic Benefit: There is no economic benefit derived from not properly marking and labeling the containers with the accumulation start date.

4. Recalculation of Penalty Based on New Information: Not applicable

* Percentage amounts are applied to the dollar amount calculated on line 4, Part I.

ATTACHMENT III

GRAVITY BASED PENALTY MATRIX

EXTENT OF DEVIATION FROM REQUIREMENT

P
O
T
E
N
T
I
A
L

F
O
R

H
A
R
M

	MAJOR	MODERATE	MINOR
MAJOR	\$25,000 TO 20,000	\$19,999 TO 15,000	\$14,999 TO 11,000
MODERATE	\$10,999 TO 8,000	\$7,999 TO 5,000	\$4,999 TO 3,000
MINOR	\$2,999 TO 1,500	\$1,499 TO 500	\$499 TO 100

ATTACHMENT III
(continued)

MULTI-DAY PENALTY MATRIX

EXTENT OF DEVIATION FROM REQUIREMENT

P
O
T
E
N
T
I
A
L

F
O
R

H
A
R
M

	MAJOR	MODERATE	MINOR
MAJOR	\$5,000 TO 1,000	\$4,000 TO 750	\$3,000 TO 550
MODERATE	\$2,200 TO 400	\$1,600 TO 250	\$1,000 TO 150
MINOR	\$600 TO 100	\$300 TO 100	\$100